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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/584,098	10/30/2007	Mansour Samadpour	66090-004US0	3434

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EXAMINER

HENKEL, DANIELLE B

ART UNIT	PAPER NUMBER
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1775

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10/06/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/584,098	Applicant(s) SAMADPOUR, MANSOUR	
	Examiner DANIELLE HENKEL	Art Unit 1797	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10/30/2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>6/18/08</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Summary

1. This is the initial Office action on the 10/584098 application filed on 10/30/07.
2. Claims 1-20 are pending and have been fully considered.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1, 3-9, and 11-20 are rejected under 35 U.S.C. 102(e) as being anticipated by BRADLEY (US 2004/0107782).
 - a. With respect to claim 1, BRADLEY discloses a portable containment sampling system for sampling contaminants (microbial organisms) from a number of different matrices (present on surfaces) (0017) comprising: a reservoir suitable for providing rinse solution (microbial collection fluid) (0025); a collection unit (sample collection chamber) capable of being sterilized (0018); a handheld sampling tool (integrated collection fluid delivery and collection fluid recovery member) capable of being sterilized (0019), configured to deliver solution (collection fluid) into a sampling area (target surface), and contemporaneously

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evacuate material from the sampling area (delivered fluid from the surface) (0030-31); a rinse solution tube with a rinse solution pump (delivery means), for transferring the solution from the reservoir to the sampling tool (in communication with both the reservoir and the integrated member, and operable to aseptically deliver collection fluid from the reservoir to the integrated member) (0025); and an air pump (vacuum means) configured for drawing in a sample and transporting the sample to the collection unit (in communication with both the sample collection chamber and the integrated member, and operable to direct collection fluid, delivered and recovered by the integrated member, to the sample collection chamber) (0019).

b. With respect to claim 3, BRADLEY discloses the reservoir is a pressurized container (0025).

c. With respect to claim 4, BRADLEY discloses the reservoir is a pressurized container (0025) and that the rinse solution pump is pressurized air and rinse solution (0025).

d. With respect to claim 5, BRADLEY discloses the delivery means comprises a fluid pump (0025).

e. With respect to claim 6, BRADLEY discloses the vacuum means is an air pump that draws the sample in (vacuum) with a liquid trap between the collection unit and air pump (0026).

f. With respect to claim 7, BRADLEY discloses the sampling tool has a spray nozzle that disperses rinse material within an area of the tool (0035).

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- g. With respect to claim 8, BRADLEY discloses the sampling tool comprises an actuatable valve for delivering rinse fluid (0027).
- h. With respect to claim 9, BRADLEY discloses a washing and cleaning (sanitizing means) for the sample tool (0072).
- i. With respect to claim 11, BRADLEY discloses the sampling tool head conforms to sample spherically shaped items (to target surface contour) (0037).
- j. With respect to claim 12, BRADLEY discloses the shape or size of the sampling tool head is varied (calibrated) dependent upon specific characteristics of the area being sampled (0037).
- k. With respect to claim 13, BRADLEY discloses a method for sampling surfaces comprising delivering a rinse solution (collection fluid) to a surface and contemporaneously evacuating the material from the sampling area to a collection chamber by means of a sampling tool (integrated collection fluid delivery and collection fluid recovery member) (0030).
- l. With respect to claim 14, BRADLEY discloses the target surface is a food surface or food contact surface (0012).
- m. With respect to claim 15, BRADLEY discloses the food surface is that of an animal carcass (0012).
- n. With respect to claim 16, BRADLEY discloses the carcass is hog or beef (0073).
- o. With respect to claim 17, BRADLEY discloses the rinse fluid preserves vitality without promoting growth for detection methods (0040).

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- p. With respect to claim 18, BRADLEY discloses the rinse fluid promotes culturing (growth) for detection methods (0040).
- q. With respect to claim 19, BRADLEY discloses the collection unit comprises a diffuser tube to provide an impinger (0023-24).
- r. With respect to claim 20, BRADLEY discloses a method of sampling comprising collecting a gas sample by means of a sampling tool (integrated collection fluid delivery and recovery member) in communication with an air pump (vacuum) drawing in air; and directing the sample into an impinger comprised of a collection unit having a tube (diffuser tube) allowing atmospheric sampling (0023-24, 0072).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

- 1. Determining the scope and contents of the prior art.
- 2. Ascertaining the differences between the prior art and the claims at issue.
- 3. Resolving the level of ordinary skill in the pertinent art.
- 4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

7. Claims 2, and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over BRADLEY (US 2004/0107782).

a. With respect to claim 2, BRADLEY discloses the claimed invention except for the sampling tool member being reversibly detachable. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the tool member detachable, since it has been held that constructing a formerly integral structure in various elements involves only routine skill in the art. *Nerwin v. Erlichmena*, 168 USPQ 177, 179.

b. With respect to claim 10, BRADLEY discloses a cleaning and washing means but does not explicitly disclose the sanitizing means to be a sanitation unit with a sanitizing reservoir; however, it would have been obvious to one of ordinary skill in the art to provide any known method for sanitizing sampling heads, such as a reservoir containing a sanitizing solution. Such solutions and reservoirs would have been well known to one of ordinary skill in the art at the time of the invention.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DANIELLE HENKEL whose telephone number is (571)270-5505. The examiner can normally be reached on Mon-Thur: 11am-8pm, Alternate Fridays.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Marcheschi can be reached on 571-272-1374. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/DANIELLE HENKEL/
Examiner, Art Unit 1797

/Michael A Marcheschi/
Supervisory Patent Examiner, Art
Unit 1797